

MANAGING FOOD ALLERGENS IN FOOD SERVICE VENUES

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DWT Hospitality

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I. SCOPE OF ARTICLE

Diagnoses of food allergies have become more prevalent in recent years, with most estimates showing that 2-3% of Americans have a food allergy. Reactions to food allergies run the gamut of minor irritation to extremely serious, with up to 200 people a year dying from a severe allergic reaction. The hazards associated with serving food allergens to an allergic but unknowing consumer, have not gone unnoticed by trial lawyers, legislators, or beaurocrats.

Our discussion is designed to assist legal counsel to garner their restaurant client's attention and encourage management practices to reduce legal exposure associated with the service of food allergens. Specifically, we address the following questions: What are the most common food allergens, and what are the potential allergic reactions? What developments in recent years – in courthouses and in legislative chambers – must restaurant clients be prepared to respond to? What is a restaurateur's legal obligations? What are leading industry members doing, and what management actions are recommended?

II. FOOD ALLERGENS AND HUMAN REACTIONS

A. Common Food Allergens.

The most common food allergens are milk, eggs, soy, wheat (gluten), fish, shellfish, peanuts and tree nuts, which together account for about 90% of all food-allergic reactions. *Common Food Allergens*, <http://www.foodallergy.org/allergens/index.html> (last visited Jan. 23, 2007) Congress adopted these findings in Section 202 of the federal Food Labeling and Consumer Protection Act of 2004 (FLCPA).

To some extent, this list of common allergens almost sounds like the building blocks of our diet. The presence of these common allergens in food often is not obvious, however. For example, many non-dairy products, such as canned tuna, may contain casein (a milk protein), or butter may have been melted on a steak after it has been grilled, for extra flavor. Tree nut ingredients may have been used in cereals or crackers. Salad dressing and sauces may contain anchovies. Soya products are used in almost every food category. With the creativity of our food manufacturers, and our chefs, the possibilities – and the risks of inadvertent exposure to a food allergen – are almost endless.

B. Allergic Reactions and Symptoms

Every food service venue should take food allergy problems seriously. The worst health risks include “fatal or near-fatal reactions because of food-induced anaphylaxis, an abnormal reaction

¹ Special thanks also to our DWT colleague Kelly Luzania, and our DWT summer associate Blake Robinson, for their research assistance.

in which the immune system overreacts to what is—for most people—a harmless substance.” National Restaurant Association, *Food Allergen Awareness*, RESTAURANTS USA, January 2002. In 2004, Congressional findings revealed that in the United States, approximately 30,000 individuals require emergency room treatment, and 150 individuals die because of allergic reactions to food. FALCPA, Sec. 202(1)(B) (2004).

Symptoms vary widely, across individuals and even for the same person during different exposures. International Food Information Council Foundation, *Understanding Food Allergy* <http://www.ific.org/publications/brochures/allergybroch.cfm> (last visited January 23, 2006). According to the Food Allergy & Anaphylaxis Network, the symptoms of a food allergy reaction range from “a tingling sensation in the mouth, swelling of the tongue and the throat, difficulty breathing, hives, vomiting, abdominal cramps, diarrhea, drop in blood pressure, and loss of consciousness to death” *Frequently Asked Questions*, <http://www.foodallergy.org/questions.html> (last visited January 23, 2006). Symptoms may appear almost immediately -- within minutes of consuming the food – or up to a few hours after the person has consumed the allergen. Skin rash reactions are common, but the most severe outcomes are generally associated with anaphylaxis or anaphylactic shock.

Anyone in the food service business needs to be prepared to prevent and respond to these risks. Responsibility may range from corporate counsel, to lead chefs, to servers.

III. RECENT DEVELOPMENTS

A. Litigation.

In general, there have been relatively few reported lawsuits involving food allergens and restaurant liability. Some speculate that a major reason for the lack of lawsuits is that allergic reactions often appear very quickly so it is easy to make a direct link to the food recently ingested. As a result, restaurants often enter into a prompt settlement rather than dispute the matter.

However, there have recently been some food allergen lawsuits involving undisclosed or mislabeled food allergen content. Over the last year or so, at least two lawsuits were filed against McDonald’s claiming that the restaurant failed to disclose that its french fries contained gluten. At least one of the plaintiffs alleged that the french fries were defective and unreasonably dangerous. The plaintiff claimed that the lack of a warning about gluten concealed the risk that the french fries posed to people allergic to gluten. The plaintiff also alleged that McDonald’s misled consumers by stating on its website that its french fries were part of a “Gluten free menu.”

These suits directed at McDonald’s so far appear to be focused at allegedly mislabeling of French fries as “gluten and dairy free” for many years. However, in the face of these lawsuits, under its nutritional information section on its website, McDonald’s amended this list, and stated that its fries are in fact fried in frying oil containing a natural flavoring. Two ingredients in the natural flavoring were hydrolyzed milk and hydrolyzed wheat. (As discussed later, McDonald’s has changed the food allergen information on its website.) In response to these cases,

McDonald's hired scientists to run allergen detection tests of its finished product, and found that wheat protein allergens were below detectable levels, but that milk proteins were present.

But word got out. McDonald's has since been sued by at least three separate individuals who relied on the restaurant's posted nutritional and ingredient information to consume French fries. Two plaintiffs were gluten-intolerant and one was a vegan. One of the gluten-intolerant plaintiffs is seeking to form a class action lawsuit on behalf of gluten-intolerant McDonald's patrons who relied on the gluten-free label to purchase French fries. In response, the Celiac Foundation, an organization which represents gluten-intolerant individuals, released a statement in opposition to these lawsuits, saying they would ultimately discourage restaurants from providing voluntary food allergen information in the fear that someone might sue them for a mistaken post. [Cite.]

A 2005 case from Ohio demonstrates the protection that a warning on a menu can provide to restaurants. In *Woeste v. Washington Platform Saloon & Restaurant*, a customer contracted the bacteria vibrio vulnificus and died after eating raw oysters served at the defendant's restaurant. The defendant was not found liable for the defendant's death because the restaurant's menu contained a warning that detailed the dangers of eating raw oysters. Had there been no warning on the menu, the restaurant may have had to pay millions of dollars in damages. See *Woeste v. Washington Platform Saloon & Restaurant*, 2005 WL 2173094 (Ct. App. Ohio, 2005).

In addition to the McDonald's situation, the website www.lawyersandsettlements.com lists a number of instances in which grocers and retailers "mislabelled" products, including a bakery that did not label a product as containing nuts, and Whole Foods who recently pulled a soy product from its shelves when they discovered it contained dairy ingredients. This website appears to be set up by a marketing association trying to find potential plaintiffs to bring litigation against these companies. Users are even able to file information about potential complaints online through secure forms. Indeed, it seems to have never been easier for your restaurant's customers to become a plaintiff.

B. Federal Legislation.

In 2004, Congress stepped in with the Food Labeling and Consumer Protection Act (FALCPA). The FALCPA went into effect on January 1, 2006. This law was created to ensure uniform labeling for ingredients and pre-packaged foods. The FALCPA requires that foods containing milk, eggs, fish, crustacean shellfish, peanuts, tree nuts, wheat, and soy display the presence of that food in an ingredient list. In the food service context, FALCPA's labeling requirements extend only to prepackaged foods. FALCPA's labeling requirements do not apply to foods provided by a retail food establishment that are placed in a wrapper or container in response to a consumer's order - such as the paper or box used to convey a sandwich that has been prepared in response to a consumer's order.

The Food and Drug Administration is engaging in an ongoing effort to develop further guidelines for restaurants in this area. At the same time, the newly released edition of the Food Code for restaurants now contains a definition of "major food allergen" that is consistent with the FALCPA. The FDA, USDA, and CDC's recommended Food Code now requires that the person in charge of a food establishment must demonstrate knowledge of these major food allergens.

See 2005 Food Code, Sec. 2-102.11(C)(9). Although restaurant owners may not face statutory penalties for failing to disclose the presence of common allergens in their food, they may still be held liable in a private lawsuit.

Although restaurants do not have to comply with the FALCPA, some do so voluntarily to give more information to their clientele. After McDonald's situation, however, many fear that voluntary food allergen labeling may discontinue out of fear of liability from accidental mislabeling. In fact, McDonald's situation may have arisen as a result of this statute, because their supplier was required by FALCPA to list on the packaging all potential food allergens in its product, which includes wheat and milk ingredients.

C. State Legislation.

A growing awareness of food allergies is prompting changes in state law as well. In 2005, New Jersey adopted its "Ask Before You Eat" law, which directed the state's health commissioner give each restaurant a fact sheet on food allergies, and provides funding for public campaign to educate about food allergies. N.J. REV. STAT. § 26:3E-14 (2005) and N.J. REV. STAT. § 26:3E-15 (2005). A number of other states are considering additional legislation related to food allergens. While the target initially is often the restaurant industry, in many states the effort thus far has been redirected to focus on allergen education and management in school foodservice environments. Minnesota, New York, and Massachusetts are considering similar laws. State restaurant associations must remain active in their state capitals to avoid unnecessary legislation, and in-state restaurants must remain voluntarily diligent to reduce the risks of precedent-setting food allergen lawsuits.

IV. STANDARD OF CARE, DUTY TO WARN, AND DISCLOSURE OBLIGATIONS

A. Strict Products Liability

Strict products liability is liability without fault for an injury proximately caused by a product that is defective and not reasonably safe. While the laws and exceptions pertaining to strict liability vary by state, liability typically stems from manufacturing or design defects and/or the failure to provide sufficient warnings, labels, or instructions regarding a product. In general, a product is defective and unreasonably safe if it does not meet the consumer's expectations. For example, if a restaurateur represents a salad dressing that they make as peanut-free, but this turns out not to be the case due to a manufacturing error, the restaurateur could be held strictly liable (the restaurateur could also be liable under theories of negligence and breach of warranty). For a food company to be held strictly liable for failing to provide sufficient warning or labeling of allergen information, a duty to warn must first exist. While the FALCPA establishes this duty for manufacturers of packaged goods, this statutory duty does not apply directly to foodservice. As discussed, however, some states are grappling over whether to extend such a duty to the restaurant industry.

B. Negligence

The two primary factors that courts consider when determining if a restaurant owner is liable for a consumer's allergic reaction to food are the number of people that have the same allergy as the consumer and the seriousness of the allergic reaction.

The Restatement 2d of Torts 402A Comment J says that "the seller may reasonably assume that those with common allergies, as for example to eggs or strawberries, will be aware of them, and he is not required to warn against them." This seems to be at odds with the new FALCPA requirements, especially since eggs are one of the eight FALCPA allergens. The Torts Restatement may be intending to refer food products where the ingredient is obvious, such as an Egg McMuffin, as it contains is an exception that states if the ingredient "is one which the consumer would reasonably not expect to find in the product, the seller is required to give warning against it."

A court determining if a restaurant met its duty to warn consumers of an allergen in food will likely consider the following:

- The completeness of the warning
- The conspicuousness of the warning
- The specificity of the warning
- Whether the restaurant revised the warning after an injury

How should a restaurant deal with risks inherent associated with serving individuals with food allergies? One thought is to voluntarily post nutritional information for menu items online and/or at the restaurant. A number of restaurant chains are currently posting the general ingredients of their dishes online. However, McDonald's did this, and the backlash was great when the information they provided ended up being partially incorrect. Another recommendation is to train restaurant staff on food allergens, including what they are and which items on the menu contain them.

V. CURRENT RESTAURANT INDUSTRY PRACTICES

A. Overview of Current State of Affairs and Practical Issues in Industry

The scope of the allergen issue is broad and complex and there is no industry consensus on the best way to respond. While producers of packaged goods must affirmatively disclose the presence of any of the eight major allergens in their product, there is no such mandate in the restaurant industry. Although special interest groups are lobbying for similar mandatory disclosure in restaurants (i.e., on the state level in Massachusetts), it appears unlikely that this will occur in the near future. The practical differences between packaged goods and food service may make the imposition of such an obligation on restaurateurs unduly burdensome and risky to both consumers and businesses. Some of these differences include:

- Packaged goods are typically produced in a contained and controlled environment where it is easier to list and monitor the ingredients that are going into a specific product. For example, a typical box of pasta will read “Contains wheat and comes into contact with equipment that processes eggs.” In the restaurant business, meal production is more complicated. Consider how many different types of products and ingredients come into contact with the grill at your local diner.
- Allergen labeling on packaged goods is not as likely to become inaccurate in comparison to foods that are made to order in the fluid environment of a restaurant where cross contamination is a greater risk and mistakes are more likely to be made due to the number of products produced with varying ingredients in a confined space.
- Packaged goods do not present the risk of an employee conveying inaccurate information to the consumer.

1. The Industry Response

Led by the major chains, the industry’s response to food allergen issues is starting to take shape. Litigation and the fear of it is the primary motivating factor for adopting allergen policies and procedures. However, because there is a large and growing market for the approximately eleven million Americans with food allergies or intolerances, we are beginning to see major chains take affirmative steps to capture this audience. As discussed in greater detail below, the current industry response shows little uniformity. Although a number of the largest quick service restaurants have adopted a similar response, in general, practices and policies vary between and within market segments.

a. The National Restaurant Association response

The National Restaurant Association, which is aligned with the Food Allergy and Anaphylaxis Network (FAAN), an organization that works with food-allergic consumers and represents their interests, provides general guidance to the industry. In conjunction with FAAN, the National Restaurant Association has produced a video in both English and Spanish. The training emphasis focuses on adopting policies that help ensure that accurate information is passed along to customers, and that special requests by allergic customers are handled with care and oversight from the time the product is ordered and through preparation and service to the customer.

b. Quick Service Restaurants (QSRs)

The QSR response is across the board. Many of the largest chains have opted for comprehensive written disclosures of allergens in spreadsheet form, such as McDonalds, Burger King, Wendy’s, Kentucky Fried Chicken, Jack In the Box, Pizza Hut, and Subway. Others such as Dairy Queen, Del Taco, and Sonic provide general allergen notices. Some chains provide no allergen information on their websites. Carl’s Jr./Hardee’s, Moe’s Southwest Grill, and El Pollo Loco fall into this category.

It is difficult to predict whether, absent legislative mandate, QSRs will uniformly adopt comprehensive written allergen disclosures. Written disclosures do not eliminate risk to the restaurant and its customers because the information may not be accurate. It may also increase risk because an allergic consumer may be inclined to rely on the printed information and not notify the restaurant about an allergic condition, thus not ensuring optimum care in preparation of the product. However, due to employee training and turnover problems, language barriers, the emphasis on speed of order and service, the high risk of mistake in both drive through and counter service, comprehensive disclosures, combined with basic employee training and a notice to customers to advise servers of allergic conditions, may be the best way to manage risk for many QSRs.

c. Casual and Fine Dining.

The spreadsheet-style disclosures have not made their way into the casual and fine dining market segments, at least with respect to the large chains. The casual and fine dining segments enjoy risk management luxuries the QSR segment does not have, not the least of which is more time with the consumer's ordering experience. Time gives the restaurant a greater opportunity to provide the customer accurate allergen information (or equally important not inaccurate information), and to take and prepare custom orders with care. In addition, lower employee turnover in these market segments lends to better training of staff and management and superior implementation of allergen and food sensitivity policies.

The allergen responses to date vary across casual and fine dining market segments. The most sophisticated large chain response comes from the Chili's brand, by Brinker International. Every month, Chili's publishes a comprehensive suggested menu for customers with allergies and intolerances. The menu further protects against risk by alerting to the possibility of cross contamination and advising patrons to alert servers of any allergic condition before ordering. Chili's efforts require a significant amount of effort and expense. Also, although it is a complete response, it does not eliminate risk. The voluntary assumption of the obligation to routinely update the menu requires Chili's to exercise due care in following through on this commitment. The failure to update concurrent with changes to ingredients and/or menu items could expose Chili's to potential liability. In addition, when Chili's affirmatively represents that certain menu items are allergen-free, it must be certain that this information is accurate. Cross contamination and mistakes occur no matter how careful a restaurant's policies and procedures, The affirmative written representation that a menu item is allergy free may create more liability than no disclosure at all.

As for other restaurants in these segments, an online review shows that Brinker is not providing the same disclosures and suggestions with its other brands, including Romano's Macaroni Grill and On the Border. The Cheesecake Factory, the casual dining segment's highest gross sales per unit chain, advises patrons to alert their server if they have allergen issues or concerns. Friday's, P.F. Chang's, Olive Garden, Ruby Tuesday, Red Lobster and California Pizza Kitchen appear to follow suit. Legislation may ultimately push casual or fine dining to adopt practices similar to Chili's, but absent a mandate we would not expect to see many in these segments gravitate in this direction.

B. The Market for Allergic and Sensitive Customers

According to a 2004 report, the U.S. market for food allergy and intolerance packaged goods will reach \$4 billion by 2008, up from \$1.8 billion in 2003. See *The U.S. Market for Food Allergy and Food Intolerance Products*, PACKAGED FACTS. Peruse the aisles of any natural foods store and the number of packaged goods companies capitalizing on this trend is stunning. While diets like the low carb craze that come and go, the market for products for those with food allergies and sensitivities has a captive and growing base of consumers who must monitor their dietary intake for medical reasons.

Ian's Natural Foods from Revere, Massachusetts, which manufactures and markets healthy frozen foods to children, is experiencing success with its allergen and gluten free chicken nugget and fishstick line. In the process, it is potentially gaining customers for life and opening doors to opportunities in food service by establishing itself as a specialty leader. While a number of independent restaurants and small chains emphasize the promotion of allergen and sensitivity-free menu items, with the exception of Chili's, the major chains have yet to mount a significant push. Notably, though, a number of well-known chains have introduced gluten-free menus for those suffering from Celiac disease, which affects approximately one out of 133 Americans. Outback Steakhouse, Boston-based Legal Seafood, and PF Chang's have launched successful gluten-free menus. The marketing to the gluten intolerant does not necessarily indicate that chains will start targeting the allergic.

In sum, absent a legislative mandate or a clear litigation-driven standard of conduct, we expect no uniformity in the industry's response to food allergen and sensitivity issues. Allergen issues are complex, and the best practices for one restaurant may not be well suited for another.

VI. FOOD ALLERGENS CHECKLIST

By adhering to the following recommendations, your clients will not only provide better service for their customers, but might also avoid a large lawsuit:

- Obtain information about any menu items that contain one of the eight allergens covered by the FALCPA, and the risks of consuming the allergen. This can be in the form of a recipe/ingredient handbook or the like.
- Train staff on the presence of food allergens in menu items and the risk of cross contamination in the preparation process.
- Designate a manager, chef, or other staff person on every shift to handle allergen issues at the restaurant (i.e., special menu requests, questions).
- Place a notice on menus and/or menu board that alerts customers to advise a server if they have an allergic condition.
- Activate a response for handling special requests.

- Train staff to answer questions honestly and accurately – don't guess ("I don't know" is a better answer than the wrong answer) and notify the manager, chef or another designated staff person about the request.
- Instruct chefs and handlers to check ingredients again before serving, particularly on orders noted for a food allergic customer.
- Use care to avoid cross contamination of food allergens, and store foods with allergens away from foods without allergens.
- Make sure that any advertisements, websites, restaurant signage, etc. do not contain misleading information about the contents of food served in the restaurant.

VII. CONCLUSION

Food allergens are a huge concern for any consumer who suffers from them. They should be just as important to food service providers as well. Litigation, and federal and state legislation, may clarify the industry's obligations over time. Meantime, the National Restaurant Association, in coordination with food allergen groups, and other industry leaders in various segments offer useful tools and examples to help tailor allergen information management and disclosure in order to help your clients better serve their customers, and to help you better serve your clients. Finally, it is important to note that a restaurant's food allergen risk management activities are not only important at the operations level, but also should be identified in general terms at least in employment manuals, franchise materials, investment and securities documents, as well.

5th Annual Hospitality Law Conference
Presents

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Jesse Lyon

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- Experience negotiating complex operating, management, distribution and manufacturing agreements for clients in the hospitality industry
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The Facts

- Diagnoses more prevalent.
- Up to 200 deaths annually from a severe allergic reaction.

Food Allergens and Human Reactions

- Common Food Allergens (Big 8)
 - milk, eggs, soy, wheat, fish, shellfish, peanuts and tree nuts

Food Allergens and Human Reactions



Food Allergens and Human Reactions



[http://health.discovery.com/centers/allergyasthma/foodallergy/body_full.html]

Food Allergens and Human Reactions



[<http://www.allergycapital.com.au/Images/Delayed%20eczema.jpg>]

Food Allergens and Human Reactions



[<http://health.yahoo.com/media/healthwise/nr551511.jpg>]

Recent Developments

- Litigation
 - Prompt settlements rather than prolonged appellate results
 - Insurgence of lawsuits surrounding undisclosed or mislabeled content
 - French fries and gluten?
 - A raw oysters disclaimer?

Recent Developments

- Federal Legislation
 - Food Allergen Labeling and Consumer Protection Act (FALCPA)
 - milk, eggs, fish, crustacean shellfish, peanuts, tree nuts, wheat, and soy
 - Food Code would require you to demonstrate allergen knowledge
- State Legislation
 - State laws changing as well
 - “Ask Before You Eat”

Ask Before You Eat



Standard of Care, Duty to Warn, and Disclosure Obligations

- Liable?
 - Number of people that have the same allergy as the consumer
 - Seriousness of the allergic reaction
- What about the Egg?
- Details
 - The completeness of the warning
 - The conspicuousness of the warning
 - The specificity of the warning
- Accuracy!

Current Restaurant Industry Practices

- Unlike packaged goods, there is no duty to affirmatively disclose the presence of allergens. Many of the larger chains have adopted their own best practices.
- Most restaurants have done nothing.

Will Laws Require Affirmative Disclosures in Foodservice?

- Difficult to predict.
- State legislatures have wrestled with whether to require disclosures in Massachusetts, other states.
- No laws require it yet.

Arguments For Comprehensive Disclosures

- Potentially better protection for those with allergies.

Arguments Against Comprehensive Disclosures

- Unlike packaged goods, restaurant products often prepared in environments that lack controls.
- Cross contamination risk is higher in restaurants.
- Restaurants more likely to be incorrect about presence of allergens.
- Affirmative disclosure is prohibitively costly to most restaurants.
- Affirmative disclosure creates unreasonable litigation risk.

Industry Trends

- Large chains, motivated by litigation concerns, have begun to adopt policies.
- Responses vary across the industry.
- Some have capitalized on marketing opportunities.

National Restaurant Association

- Front of the house and back of the house training.
- Provide accurate information.
- Prepare special orders with care.
- The QSRs - Prime Litigation Targets
Comprehensive written disclosures.

[http://app.mcdonalds.com/bagamcmeal?process=item&itemID=1]

[http://www.pr.com/upload/presskit_1214_1111255113.pdf]

[http://www.wendys.com/food/pdf/us/allergen_list.pdf]


[http://www.jackinthebox.com/ourfood/ingredients.php]

[http://www.pizzahut.com/menu/allergen.asp]


General Notice



The screenshot shows a web browser window displaying the Dairy Queen website. The page is titled "Allergies" and features a prominent "DO NOT SHARE" warning. The text on the page discusses the importance of allergen information for customers with food allergies and provides a link to a detailed allergen menu. The URL at the bottom of the browser window is <http://www.dairyqueen.com/en-US/Menu-and-Nutrition/Special-Dietary-Needs/Allergies.htm>.

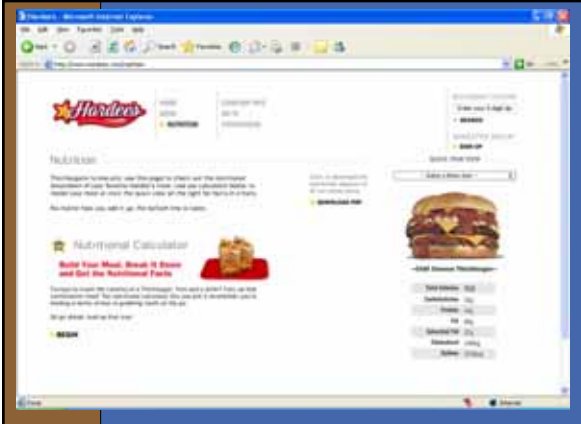


The screenshot shows a web browser window displaying the Sonic Drive-In website. The page features a navigation menu on the left and a main content area with various food and drink items. The URL at the bottom of the browser window is <http://www.sonicdrivein.com/menu/index.jsp>.



The screenshot shows a web browser window displaying the Del Taco website. The page features a large table of nutritional facts for various menu items. The table includes columns for item names, calories, and other nutritional information. The URL at the bottom of the browser window is <http://www.deltaco.com/nutritionalfacts/DelTaco-Nutrition%203.05.pdf>.

No Disclosures or Notice



The screenshot shows a web browser window displaying the Hardee's website. The page features a "Nutritional Calculator" section with a form for inputting item selections and a "Calculate" button. The URL at the bottom of the browser window is <http://www.hardees.com/nutrition>.

Follow your savings. And your conscience. At El Pollo Loco, we've got a little bit of everything to make you happy.

The El Pollo Loco Way

[http://www.elpolloco.com/nutritional/EP.Nutrition.pdf]

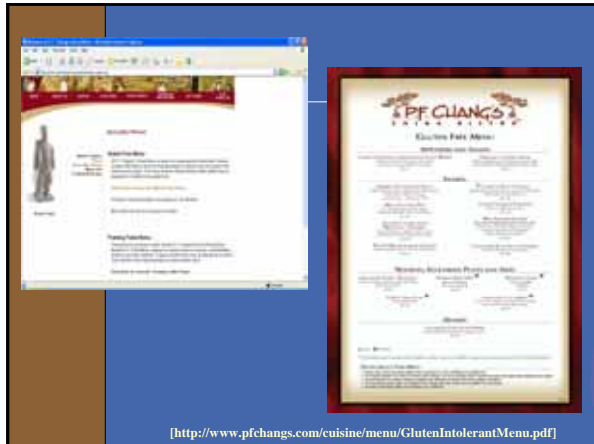
- ### No uniformity expected in QSRs
- Written disclosures do not eliminate risk and may backfire.
 - Disclosures impose an administrative burden as they must be frequently updated.
 - Cross contamination and ill-informed employees make affirmative disclosures risky in QSRs.
 - Many QSRs will "follow the leader" and adopt disclosures.
 - Disclosures in QSRs could be best but imperfect fix.

- ### Casual and Fine Dining
- No uniformity.
 - Comprehensive written disclosures not the norm.

- ### Casual and Fine Dining do not Share Some of the Risks of QSRs
- More time to get the right information to the customer.
 - More time to prepare the meal safely.
 - Generally no drive through mistakes.
 - Better training and lower employee turnover.
 - Staff less inclined to recklessly misinform customer.

[http://www.chilis.com/ChilisFoodInfo.pdf]

[http://www.thecheesecakefactory.com/frames.asp?fm=menu&pg=http://www.thecheesecakefactory.com/menu_new.htm]

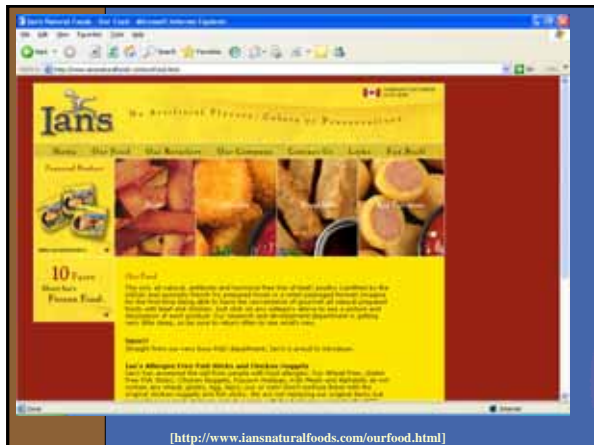


[<http://www.pfchangs.com/cuisine/menu/GlutenIntolerantMenu.pdf>]

The Market

- \$4 billion by 2008 (more than double from 2003)*.
- 11 million Americans with allergies and sensitivities.
- Medical issue - not a fad.

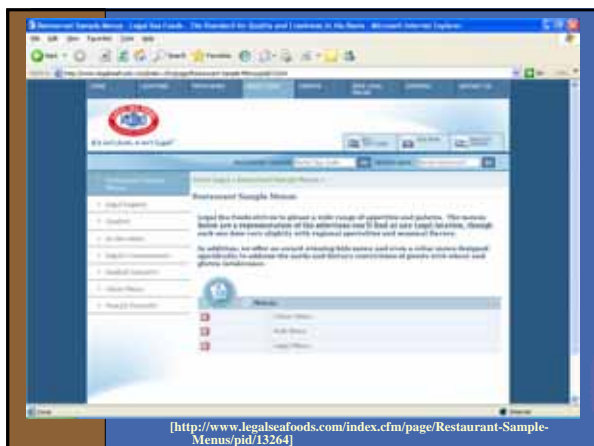
*The U.S. Market for Food Allergy and Food Intolerance Products, published by Packaged Facts.



[<http://www.iansnaturalfoods.com/ourfood.html>]



[<http://www.outback.com/ourmenu/pdf/glutenfree.pdf>]



[<http://www.legalseafoods.com/index.cfm/page/Restaurant-Sample-Menus/pid/13264>]

Best Practices

- Obtain knowledge of the ingredients of any menu items that contain one of the eight allergens covered by the FALCPA and include the risks of consuming the allergen. This can be in the form of a recipe/ingredient handbook or the like.
- Train staff on the presence of food allergens in menu items and the risk of cross contamination in the preparation process.

Best Practices

- Designate a person or persons to be capable of handling allergen issues (i.e., special menu requests, questions).
- Place a notice on menus and/or menu board that alerts customers to advise a server if they have an allergic condition.
- Activate a response for handling special requests.

Best Practices

- Train staff to answer questions honestly and accurately – don't guess. "I don't know" is a better answer than the wrong answer.
- Notify the manager, chef or another designated staff person about the request.
- Check ingredients again before serving.

Best Practices

- Use care to avoid cross contamination.
- Store foods with allergens away from foods without allergens.
- Make sure that any advertisements, websites, restaurant signage, etc. do not contain misleading information about the contents of food served in the restaurant.

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